

fied patent application (i.e., Claims 103-178; Claims 104-109, 120, 126-131, 142, 148, 149, 151, 165, 166 and 168 corresponding to claims previously withdrawn from consideration as not being drawn to the earlier-elected species-of-invention) are respectfully requested in view of the foregoing amendments and the following remarks.

At the outset, it should be recalled that the present invention provides bags or sacks, such as plastic bags, having an improved, easily openable construction, which allows for the option of having such bags or sacks stand stably and without other support. The plastic bag of the claimed invention includes a mouth covered by a closure flap. The closure flap may be peeled backwards in order to open the bag without damaging the walls of the bag in, or at, which the mouth is formed, with the closure flap being preferably attached to the bag via a peelable adhesive and, in a preferred embodiment, includes lines of weakness along which the closure flap may be conveniently and properly torn. Unlike that disclosed by the prior art, the mouth of the bag of the present invention is distinct from the open end of the bag for accessing the interior of the bag. A base portion may be incorporated into the plastic bag of the claimed invention to allow it to stably stand without other supporting means.

As will be explained in greater detail hereinafter, nowhere in the prior art is such a novel and efficient bag,

such as a plastic bag, have such an easy-open construction, which is made possible, in part, by locating a mouth for the bag which is distinct from the otherwise open end of the bag, either disclosed or suggested.

By the present amendments, Applicant has cancelled prior Claims 28-102, and have substituted therefor new Claims 103-178, of which Claims 103, 125, 145 and 162 are presented in independent form. New independent Claims 103 and 125 correspond, generally, to prior independent Claims 28 and 50, respectively, but now specify that the mouth (the "easy-open" closure portion) of the claimed bag is distinct from the closure flap thereof. New independent Claim 145 recites the combined subject matter of prior Claims 70 and 82, while new independent Claim 162 presented the combined subject matter of prior Claims 88 and 99. Both independent Claims 145 and 162 recite the inclusion of a base portion that permits the claimed bag to stably stand without additional support.

In drafting new Claims 103-178, Applicants corrected (or avoided) the typographical error which appeared in prior Claim 42, as well as other prior claims.

Applicants also provided a proper antecedent basis for the claim terminology which rendered prior Claim 63 indefinite and which was, therefore, rejected pursuant to 35 U.S.C. §112, second paragraph. Claim 63 corresponds to new Claim 138. It is respectfully submitted that the 35 U.S.C.

§112, second paragraph, rejection of the second Office Action should therefore be withdrawn.

In response to Applicants' election of species required by the first Office Action, the Examiner had that the subject matter of prior Claims 29-34, 45, 51-56, 67, 72, 73, 75, 90, 91 and 93 were withdrawn from consideration, pursuant to 37 C.F.R. §1.142(b), as not being drawn to the elected species. Of those claims now being entered, new Claims 104-109, 120, 126-131, 142, 148, 149, 151, 165, 166 and 168, respectively, correspond to, and recite the subject matter of, the claims which the Examiner held not to be drawn to the elected species-of-invention.

Because the instant patent application now contains a total of seventy-six (76) claims, Applicants include the additional claims fee of \$9.00 to cover the pendency of one additional claim beyond the U.S. National Fee and additional claims fee previously paid for prior Claims 28-102.

Additionally, in the second Office Action the Examiner had issued an objection to the drawing figures of record, pursuant to 37 C.F.R. §1.83(a), on the ground that the adhesive on the second flap, as previously recited in Claim 80, and has maintained in the new sets of claims, was not shown in the drawing figures, and would otherwise required to be illustrated.

In reply to the drawing objection under 37 C.F.R. §1.83(a), Applicants herein include proposed drawing amendments to FIGS. 2, 7, 8 and 12 illustrating such an adhesive and have designated this adhesive by reference numeral "208A." The Specification has been amended at Pages 19, 24 and 25 to incorporate this reference numeral for the adhesive.

Applicants, therefore, respectfully submit that the 37 C.F.R. §1.83(a) drawing objection of the second Office Action should now be appropriately withdrawn.

Separately, the Examiner has objected to drawing FIGS. 11 and 12 on the contention that they do not include reference numerals "208" and "221" as discussed at Page 25 of the Specification. In response to the drawing objection, Applicants respectfully wish to point out to the Examiner that reference numeral "208" is included in FIG. 12, as filed. A proposed drawing amendment for FIG. 12 has been presented for inclusion of reference numeral "221."

FIG. 11, however, has not been amended to include either reference numeral "208" or "221." The second flap (208) and the mouth (221) of the claimed bag are not visible in the view shown in FIG. 11. Applicants, therefore, respectfully submit that the inclusion of reference numerals "208" and "221" in FIG. 11 would not be appropriate.

Turning now, in detail, to an analysis of the Examiner's prior art rejections of Applicants' claims, in the second Office Action the Examiner has rejected the subject matter of prior independent Claims 28 and 70, as well as several dependent claims, as being anticipated, pursuant to 35 U.S.C. §102(b), by CITO-Kunststoffe und Verpackungsfolien GmbH, German Gebrauchsmuster No. G 90 03 401.5 ("CITO.") Relying upon the bag illustrated in FIGS. 1 - 3 of CITO, it is the Examiner's contention that the drawing figures of this reference discloses all structural elements of the claims enumerated in the anticipation rejection. Of the claims now pending in the application, Claim 28 corresponds, generally, to new independent Claim 103. The subject matter of prior independent Claim 70 has been combined with that of Claim 88 (which recites the inclusion of a base portion) and, thus, this anticipation rejection is now submitted to be moot as to prior Claim 70.

In reply to the Examiner's anticipation rejection applying CITO against the subject matter of new Claim 103, Applicants respectfully contend that CITO fails to disclose a closeable region for a bag which is clearly distinct from the "easy open" portion, or mouth, thereof, as now recited in independent Claim 103. Specifically, Claim 103 of the instant patent application recites "a mouth distinct from said open end for accessing an interior region of said plastic bag."

In contrast to that being claimed by the present Applicants, FIG. 1 of the applied CITO reference shows a bag (20) having an unnumbered open end in the lower-left portion of the figure. A separate flap (18), closable with an adhesive (19), would appear to create an outer pouch against the outer side of the bag, as designated by reference numeral "20." Two corners (14, 15) would appear to be affixed on either side of the bag (20) effectively closing off the end of the bag opposite to the unnumbered open end of the bag in CITO.

A seam, designated by reference number "22" is shown in CITO, which appears to close off the end of the bag opposite to the open end. This seam (unnumbered in FIGS. 2 and 3) would appear to be sealed, thereby making it appear difficult, if not impossible to access the interior of the bag by virtue of this "mouth." Alternatively, the German language CITO citation, which does not appear to have any English-language equivalents, is simply unclear as to how, or what, the flap (18) is intended to accomplish and, as such, cannot reasonably be considered to teach, or enable, the skilled artisan in how to make and use that disclosed therein.

In light of the foregoing, Applicants therefore respectfully contend that the Examiner's anticipation rejection of the second Office Action, as it would now apply to new independent Claim 103, should be withdrawn.

Separately, the Examiner rejected the subject matter of

prior independent Claim 50 (now corresponding to new independent Claim 125) as being either obvious, pursuant to 35 U.S.C. §103(a), over CITO, considered singularly, as discussed in Paragraph No. 13 of the second Office Action, or taken in view of Roosa, U.S. Patent No. 5,199,792, as presented in Paragraph No. 14 of the outstanding Action. When applied alone, CITO has been cited for the reasons given in the rejection of prior Claim 28 and with the further view of the Examiner that the inclusion of an adhesive or tear lines would be obvious in the art. Roosa, in the obviousness rejection of Paragraph No. 14, has been cited for its contended disclosure of a closure flap that is secured to the front wall of the pouch only outside of tear lines (38).

In reply to the Examiner's obviousness rejections of the subject matter of prior independent Claim 50 (now independent Claim 125), Applicants maintain the position that CITO fails to clearly disclose or suggest a closeable region which is distinct from an "easy open" portion, or mouth, as now recited in independent Claim 125, as explained in connection with the anticipation of prior Claim 28 (now Claim 103.) As a result, Applicants respectfully contend that CITO, taken alone or in combination with Roosa, secondarily-applied, cannot render the presently claimed invention obvious and, thus, the relevant obviousness rejections of the second Office Action should now be withdrawn.

In the second Office Action, the Examiner also proceeded to reject the subject matter of prior dependent Claims 82 and 99. The subject matter of each of these dependent claims has now been combined with the independent claim from which it depended and is presented as new independent Claims 145 and 162, respectively. Applicants therefore submit that the further obviousness rejections of dependent Claims 82 and 99, rather than the obviousness rejections of prior independent Claims 70 and 88, are now relevant:

Consequently, the Examiner has rejected the subject matter of prior Claims 82 and 99 (now Claims 145 and 162, respectively) as being obvious, pursuant to 35 U.S.C. §103(a), over CITO, taken in view of Moran, U.S. Patent No. 3,534,520. In each obviousness rejection, the Examiner has contended that the German reference of CITO discloses all claimed features of the presently claimed invention, except for the bottom construction, which the Examiner has contended is disclosed in the secondarily-applied Moran reference. The Examiner has, therefore, concluded that it would have been obvious to have provided the bag illustrated in FIGS. 1 - 3 of CITO with the bottom construction disclosed by Moran, because the bottom structure in Moran facilitates squaring up the bag so that it will stand up by itself, thereby arriving at that being claimed by the instant Applicants in Claims 82 and 99 (now Claims 145 and 162.)



In reply to the Examiner's obviousness rejections applying CITO, taken in view of Moran, Applicants respectfully submit that, whatever the German reference of CITO actually shows in FIGS. 1 - 3, the bag shown therein has a "bottom" (which is opposite its open end, as best shown in FIG. 1) which is made from the two rectangular sides of the bag (20); there not being a separate bottom, or "squaring-off" of the bottom of the bag shown in CITO, irrespective of the flap (18), the presence of a flap (18) making a squaring-off of the bottom in CITO even more problematic. Further, the corners in CITO, designated by reference numerals "14" and "15" in FIG. 1 of the German citation, would appear to be affixed to both rectangular sides of the bag (20), as well as overlapping the bottom of the bag on each side of the flap (18). The construction of the "bottom" of the bag in CITO, and particularly the corner elements (14, 15), would appear to exclude any reasonable possibility, or suggestion, that the bottom (which is submitted to be a seam in CITO) can be "squared up" as suggested by the Examiner in the relevant obviousness rejections of the second Office Action.

Stated differently, Applicants respectfully contend that the teachings and suggestions of the German reference of CITO, with its "seamline" bottom, precludes its combination with Moran, which teaches a block, or square-like, bottom. Such a combination, Applicants respectfully submit, can only be realized upon the improper application of hindsight

reasoning.

Accordingly, withdrawal of the 35 U.S.C. §103(a) obviousness rejections, applying CITO, taken in view of Moran, as applied against prior Claims 82 and 99 (now Claims 145 and 162), has been overcome and should now be appropriately withdrawn.

Concerning, finally, the remaining reference made of record by the Examiner, but not applied in any rejection of Applicants' claims, such additional art reference has been carefully considered, but are not believed to adversely affect the patentability of the present invention, as now claimed.

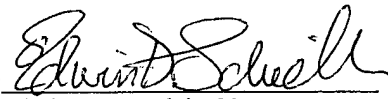
In view of the foregoing, it is respectfully contended that all claims now pending in the above-identified patent application (i.e., Claims 103-178) recite a novel and efficient bag, such as a plastic bag, have such an "easy-open" construction, which is made possible, in part, by locating a mouth for the bag which is distinct from the otherwise open end of the bag, and which may include a base portion for allowing the bag to stably stand upright, which is patentably distinguishable over the prior art. Accordingly, withdrawal of the outstanding objections and rejections and the allow-



ance of all claims now pending are respectfully requested and earnestly solicited.

Respectfully submitted,

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January 8, 2003

- Enc.: 1. Petition for Three-Month Extension of time;
2. Check for \$474.00 (Extension Fee (\$465.00) + Additional Claims Fee (\$9.00));
3. Proposed (red-inked) Drawing Amendment for FIGS. 2, 7, 8 and 12; and,
4. "Marked-Up" Version of Amendments to Specification.

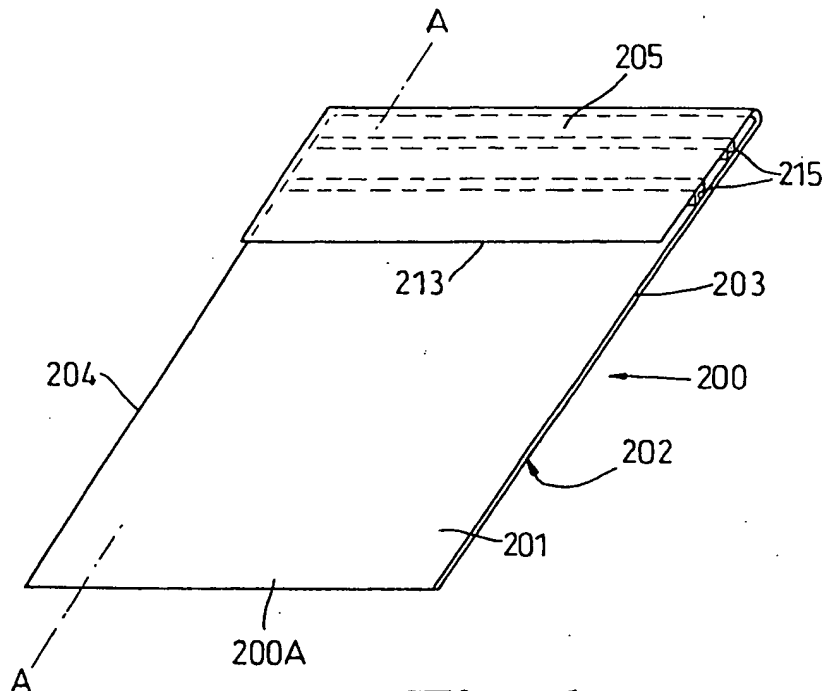
The Commissioner is hereby authorized to charge the Deposit Account of Applicant's Attorney, Account No. 19-0450, for any additional fees which may be due in connection with the prosecution of the present application, but which have not otherwise been provided for.



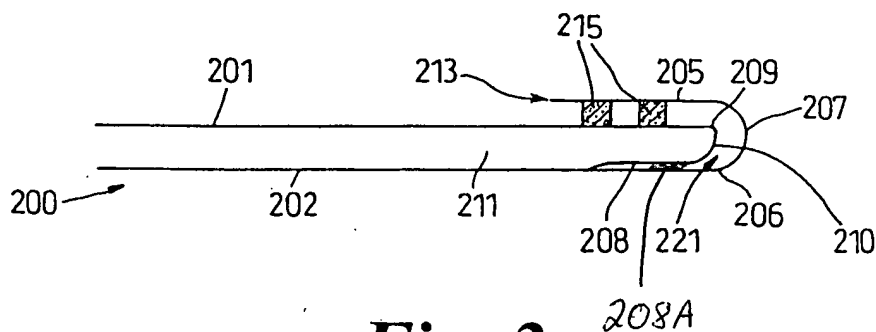
Proposed Drawing Amendment

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**Fig. 1**



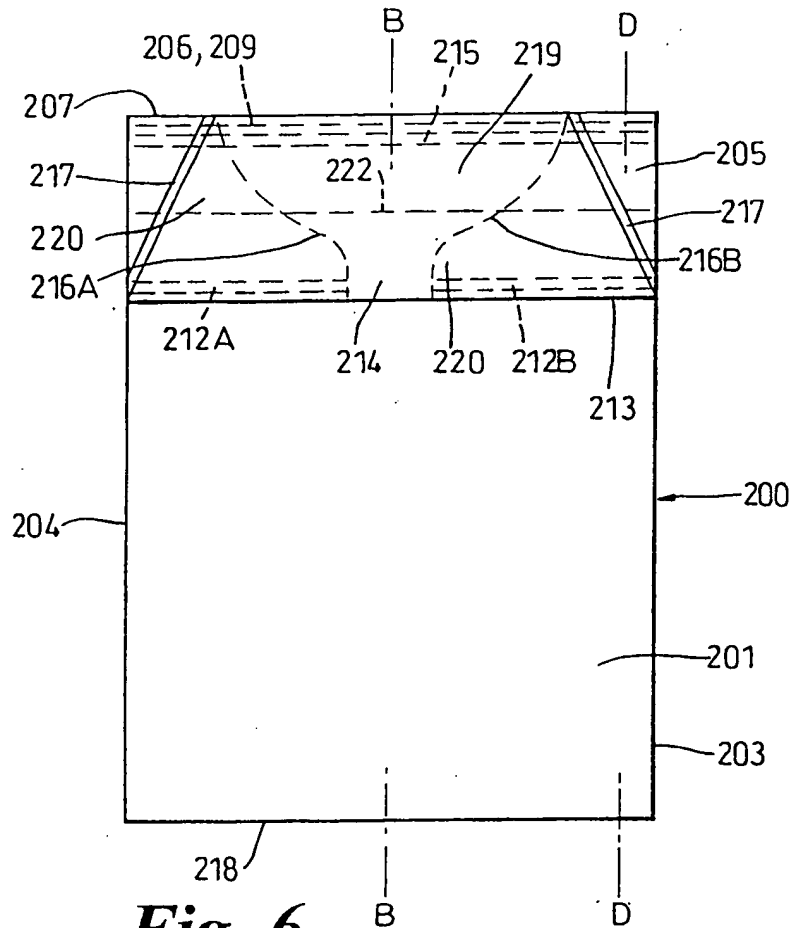
**Fig. 2**

SUBSTITUTE SHEET (RULE 26)

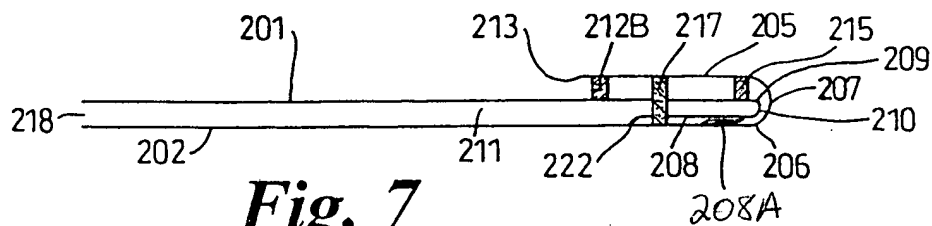
Applicants: Ian J. Smith et al.  
Serial No.: 09/743,564  
Filed: March 6, 2001  
Art Unit: 3727  
Examiner: Stephen P. Garbe

# Proposed Drawing Amendment

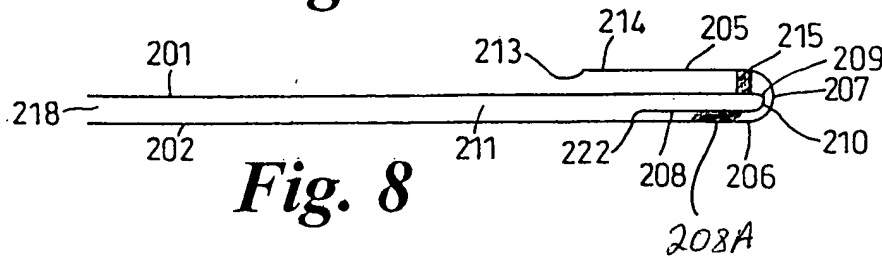
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**Fig. 6**



**Fig. 7**

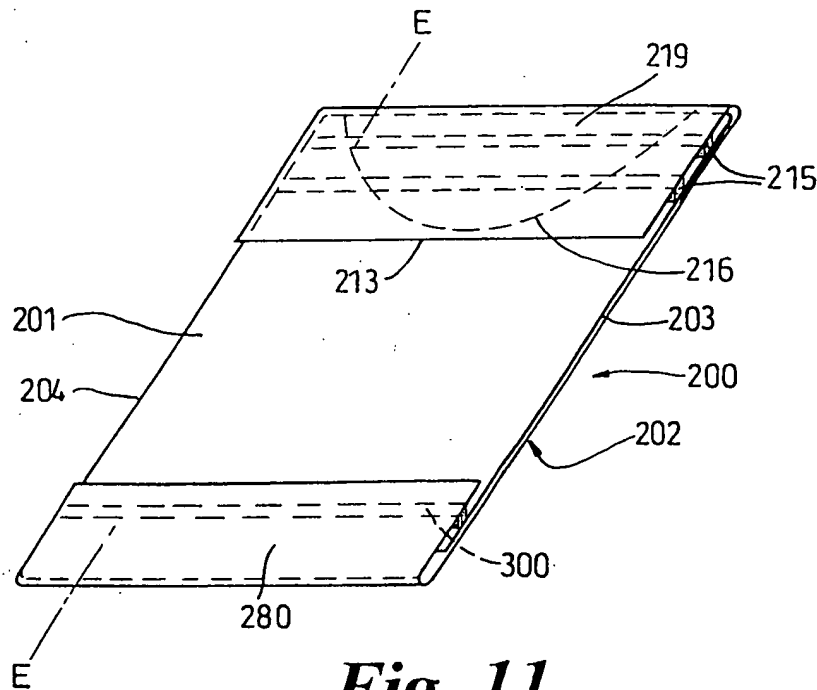


**Fig. 8**

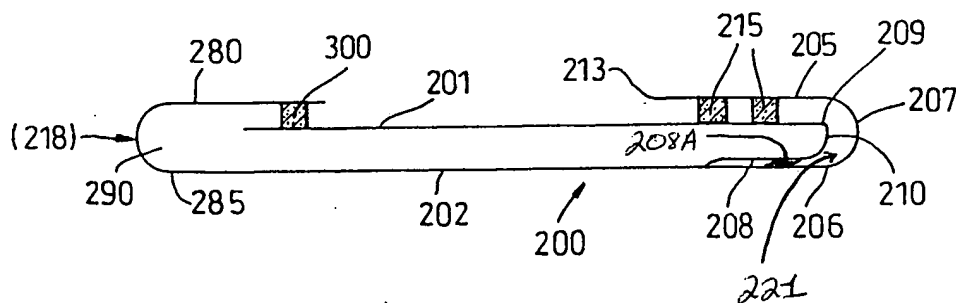
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 Serial No. 09/743, 564  
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*Fig. 11*



*Fig. 12*

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Art Unit: 3727  
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VERSION OF AMENDMENTS WITH MARKINGS TO SHOW CHANGES MADE  
(Dated January 8, 2003)

IN THE SPECIFICATION

Please amend the Specification as follows:

Page 19, line 23 - Page 20, line 3, please rewrite this paragraph to now read as follows:

--In this and other embodiments the optional second flap 208, along with adhesive 208A, assists in maintaining the integrity of the closure when the bag 200 is filled with its contents. Second flap 208 is effective in preventing the contents of the bag from penetrating to an excessive extent between the first side wall 201 and the closure flap 205 around the region of the first fold 207, which might otherwise cause distortion of the side wall 201 and/or the closure flap 205 so that they could become separated at the peelable region 215. The bag closure could then be breached, allowing the contents to leak or spill.--

Page 24, line 12 - Page 25, line 2, please rewrite this paragraph to now read as follows:

--The second flap 208 may also be used to provide means for re-closing the bag after opening. In particular, the second closure flap 208 may be provided with a layer of adhesive [(not illustrated)] 208A, which may be used to adhere the second flap 208 to the inner face of the first side wall 202. Depending on the intended use of the bag, the

MARKED-UP AMENDMENTS-1